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Attorneys for [PROPOSED] Plaintiff-Intervenor
YUHA AVIATAM OF SAN MANUEL NATION,
a federally recognized Indian tribe, also federally
recognized as SAN MANUEL BAND OF MISSION INDIANS

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE

BLUETRITON BRANDS, INC.,

Plaintiff,

v.

UNITED STATES FOREST SERVICE,

RANDY MOORE, in his official capacity
as Chief of the U.S. Forest Service,

CHRISTOPHER FRENCH, in his official
capacity as Deputy Chief for the National
Forest System of the U.S. Forest Service,

Case No.: 2:24-cv-09720-JGB-DTB

**DECLARATION OF ALLISON
BINNEY IN SUPPORT OF
YUHA AVIATAM OF SAN
MANUEL NATION'S MOTION
TO INTERVENE AND MOTION
FOR PRELIMINARY
INJUNCTION**

Hearing Date: January 13, 2025

Hearing Time: 9:00 AM

Courtroom: 1

Judge: Hon. Jesus G. Bernal

Action Filed: August 6, 2024

1 JENNIFER EBERLEIN, in her official
2 capacity as Regional Forester for the
3 Pacific Southwest Region of the
4 U.S. Forest Service,

5 DANELLE HARRISON, in her official
6 capacity as Forest Supervisor of the San
7 Bernardino National Forest of the
8 U.S. Forest Service,

9 MICHAEL NOBLES, in his official
10 capacity as Front Country District Ranger
11 of the U.S. Forest Service,

12 Defendants.

13 YUHA AVIATAM OF SAN MANUEL
14 NATION, a federally recognized Indian
15 tribe, also federally recognized as SAN
16 MANUEL BAND OF MISSION
17 INDIANS,

18 [PROPOSED] Plaintiff-Intervenor.

1 I, Allison C. Binney, declare as follows:

2 1. I am a licensed attorney, and I represent the Yuhaaviatam of San
3 Manuel Nation, a federally recognized tribe also recognized as the San Manuel
4 Band of Mission Indians (the Nation), as its registered federal lobbyist and on
5 whose behalf, I submit this declaration. In my work for the Nation, my primary
6 responsibility is to educate officials in Washington, D.C., about my client and to
7 advocate for its interests before federal agencies and Congress. The facts set forth
8 herein are based on my personal knowledge, and if called as a witness, I could and
9 would testify competently thereto.

10 2. On or around July 29, 2024, the Nation's Chief Intergovernmental
11 Affairs Officer Daniel Little notified me of a decision by the U.S. Forest Service
12 (USFS) that would effectively cut off the Nation's water supply for its Arrowhead
13 Springs property (Arrowhead Springs) within seven days. The Notice of Denial
14 letter, issued July 26, 2024, by Front Country District Ranger Nobles, rejected a
15 special use permit application and terminated an existing special use permit for
16 BlueTriton Brands, Inc. (BlueTriton), a company that I understood pulled water
17 from Strawberry Canyon in the San Bernadino National Forest ("SBNF" or
18 "Forest") and delivered a portion of that water to the Nation for its use at
19 Arrowhead Springs.

20 3. I understood the Nation's only viable source of water for Arrowhead
21 Springs was the water delivered by BlueTriton, and the Notice of Denial's effect
22 would leave the Nation without any viable water for Arrowhead Springs as of
23 August 2, 2024. I also understood the property lay within the Nation's ancestral
24 territory, and that the Nation and other government agencies relied upon the water
25 delivered to Arrowhead Springs to combat wildfire in and around Arrowhead
26 Springs as well as the surrounding community.

27 4. I was directed by Mr. Little, to immediately inform the Nation's
28 Congressional Representatives and Senators of this decision and request a meeting

1 with the Chief of the USFS to discuss the Nation's concerns in this urgent matter,
2 underscoring the Nation's reliance on this water for fire prevention efforts. I
3 immediately began such outreach, including contacting the office of the Chief of
4 the USFS to secure a meeting for the Nation's leaders.

5 5. On July 30, 2024, I received and reviewed the letter the Nation sent to
6 SBNF Forest Supervisor Danelle Harrison requesting government-to-government
7 consultation on the impacts of Forest Ranger Nobles' decision. *See* ECF No. 65-4.
8 This letter also requested that SBNF Supervisor Harrison rescind or stay Ranger
9 Nobles' decision to allow the two governments to explore a collaborative solution
10 that protects the Nation's lands and resources.

11 6. On July 31, 2024, I learned that SBNF Supervisor Harrison had not
12 yet read the Notice of Denial but committed to raising the Nation's concerns with
13 her legal counsel to see if anything could be done about the effects it posed for the
14 Nation.

15 7. On August 1, 2024, the day before the water shut off deadline, SBNF
16 Supervisor Harrison informed the Nation that she would not be able to provide the
17 Nation an answer until the following week. Given that this was after BlueTriton's
18 August 2 deadline to cease water deliveries, I contacted central office staff of the
19 U.S. Department of Agriculture (USDA) to inform them of the matter and express
20 the Nation's urgent need for an extension to continue receiving water at Arrowhead
21 Springs. I also informed relevant Congressional offices about the most recent
22 status and requested they assist. I understood that local public officials from the
23 surrounding region were separately weighing in with Congressional offices to
24 support the Nation. Specifically, they expressed serious concerns about ceasing
25 water deliveries during the height of California's fire season.

26 8. On this same day, I followed up yet again with the Chief of the USFS
27 office to request a meeting with the Nation's leaders.
28

1 9. On August 2, 2024, the water shut off deadline, I learned that SBNF
2 Supervisor Harrison would be modifying Ranger Nobles' decision, extending water
3 delivery to the Nation until September 2, 2024. I informed the relevant
4 Congressional offices. Some Congressional offices informed me that they would
5 be requesting regular updates from USFS officials so that they could monitor any
6 progress or lack thereof, given that Congress would only be in session for a limited
7 period for the remainder of the year and would have limited opportunity to take
8 legislative action if the USFS could not find a way to extend water delivery to the
9 Nation.

10 10. The extension until September 2 was, from the Nation's perspective,
11 to enable the Nation and SBNF officials an opportunity to engage in the
12 government-to-government consultation that the law required. Notably, no
13 consultation had occurred with the Nation before Forest Ranger Nobles issued the
14 Notice of Denial, despite agency officials' knowledge that directing BlueTriton to
15 cease all water deliveries would leave the Nation without water for Arrowhead
16 Springs.

17 11. On August 21, 2024, I participated in a meeting between the Nation's
18 leaders and representatives and USFS officials. Attorneys from the USDA also
19 attended.

20 12. The meeting lasted approximately two hours. During the first part of
21 the meeting, Tribal leaders and representatives explained the Nation's ancestral and
22 cultural ties to the Forest and Arrowhead Springs; the Nation's reliance on water
23 from the Forest for Arrowhead Springs; how the Nation was blindsided by Forest
24 Ranger Nobles' decision, even though agency officials knew the Nation relied on
25 water delivered by BlueTriton and that the decision would leave the Nation without
26 water for Arrowhead Springs; and the fact that the decision was made without any
27 consultation with or notice to the Nation. The Nation's leaders and representatives
28 expressed their frustration that they learned of the decision from BlueTriton rather

1 than from the federal agency officials themselves. In response, agency leadership
2 stated their only obligation was to BlueTriton, that any concerns the Nation had
3 about accessing water needed to be resolved between the Nation and BlueTriton,
4 and that federal agency officials needed to be careful about what they said and did
5 in light of pending and ongoing litigation.

6 13. The agency officials also said they did not know how much water the
7 Nation uses at Arrowhead Springs or for what purpose. In response, the Nation's
8 leaders and representatives described the various water uses taking place at
9 Arrowhead Springs and provided them maps of the property.

10 14. Much of the second portion of the meeting consisted of agency
11 officials stating they could not continue allowing water from the Forest to be
12 delivered to Arrowhead Springs until there was some type of document in place
13 that authorizes such activity. Agency officials and staff detailed the special use
14 permitting process and indicated the Nation may want to consider applying for
15 such a permit. SBNF Supervisor Harrison said the process takes two to three
16 years, and there was no guarantee the Nation could secure such a permit as it
17 would have to justify its use of SBNF water. Agency officials said the aquifers are
18 not being recharged and that SBNF's Strawberry Creek has experienced degraded
19 environmental health. The Nation's leaders and representatives requested copies of
20 any studies showing Strawberry Creek's degraded environmental health, and
21 SBNF officials said such studies were still being developed.

22 15. In response, the Nation's leaders and representatives expressed a
23 willingness to connect Arrowhead Springs to a local municipal water source, but
24 research showed it would take a minimum of three years to just build the necessary
25 infrastructure (at significant expense) once entitlements and adequate funding was
26 obtained. As such, the Nation's leaders and representatives asked the agency
27 officials to help find a mechanism enabling the Nation to continue to receive water
28 through BlueTriton's infrastructure until the property could be connected to

1 municipal water. SBNF officials responded that the only available mechanism was
2 a special use permit, and that process would take too long, with no certainty as to
3 outcome.

4 16. At this point, the Nation's representatives, including myself, asked
5 whether a co-stewardship agreement between the Nation and USFS was a
6 possibility, inquiring whether this path might be quicker and more respectful of the
7 government-to-government relationship. SBNF officials said co-stewardship
8 agreements cannot be used to extract resources from national forests.

9 17. The meeting ended with no solutions identified. However, it was
10 agreed the parties would continue meeting to try and find some solutions.
11 Additionally, the Nation invited agency officials and staff to tour Arrowhead
12 Springs on August 29, 2024, so they could see the property for themselves and
13 better understand the Nation's various water uses on the property.

14 18. On August 26, 2024, SBNF Supervisor Harrison issued another letter
15 extending water delivery to the Nation's Arrowhead Springs until January 15,
16 2025.

17 19. On August 29, 2024, the Nation's staff guided SBNF officials and
18 staff around Arrowhead Springs, and I participated in that tour. While on the tour,
19 agency officials and staff expressed frustration that they were receiving regular
20 outreach from Congressional offices and felt misinformation was being shared. In
21 response, the Nation's staff communicated their concerns that agency officials and
22 staff did not adequately understand the Nation's water needs and uses and that the
23 agency was not sharing full information about the environmental health of
24 Strawberry Creek. The Nation also expressed concern that the agency was not
25 meaningfully working with the Nation to develop a collaborative solution, as
26 requested in the Nation's formal request for government-to-government
27 consultation, including finding a solution for the Nation to smoothly transition
28 from SBNF water to a local municipal water system. The tour transitioned to a

1 meeting in Arrowhead Springs' main building during which I explained to agency
2 officials and staff that Congressional offices were also regularly reaching out to me
3 personally for updates on the matter and that I interpreted their outreach as an
4 effort to be prepared and help with solutions in the event legislation was needed, as
5 there were only a limited number of days left in session.

6 20. Subsequent meetings between the Nation's leaders and representatives
7 and USFS officials occurred on September 17, 25, and November 6, 2024.
8 Additional meetings involving the Nation's staff and SBNF officials took place in
9 September and October of 2024.

10 21. Much of my time in September and October of 2024 was spent
11 researching co-stewardship agreements between the USFS and other Tribal Nations
12 to determine how long such agreements took to put in place and which ones, if any,
13 involved a Tribal Nation extracting resources from a national forest. This included
14 discussions with the USFS Office of Tribal Affairs central office staff. Contrary to
15 what we were told by SBNF officials, central office Tribal Affairs staff said
16 co-stewardship agreements involving Tribal Nations could include extracting
17 natural resources from national forests but that local forest officials had to lead the
18 development of such co-stewardship agreements, with central office staff serving
19 only as a resource.

20 22. On November 4, 2024, the Nation's leadership wrote SBNF
21 Supervisor Danelle Harrison to: (1) summarize the substance of the meetings to
22 date; (2) describe the Nation's ancestral and cultural ties to the SBNF; (3) explain
23 the Nation's expectations for government-to-government consultation, identifying
24 individuals authorized to speak for the Nation; and (4) identify specific issues the
25 Nation wanted to address during subsequent meetings. The letter's purpose was to
26 focus discussions on specific issues given that time was running out. Additionally,
27 Congressional offices had reached out to assist with implementing a legislative
28

1 solution but needed to know what solution the parties thought was viable, given the
2 limited number of legislative days left in the 118th Congress.

3 23. I informed the Congressional offices that the Nation discussed
4 legislative proposals with the USFS and SBNF officials but that they had not
5 provided us with any feedback, and I was unclear whether the agency would
6 support or oppose any legislative solution. Regardless, I provided certain
7 Congressional offices with draft legislative language that would direct the USFS to
8 continue the Nation's access to and delivery of water from the Forest until the
9 Nation connected its lands to a municipal water system. Ultimately, a legislative
10 solution was unavailable because Congress passed a limited Continuing Resolution
11 to fund the federal government through March 14, 2025, and recessed until
12 January 3, 2025, leaving no opportunity to add legislative language related to this
13 matter.

14 24. Two days later, on November 6, 2024, the Nation's leaders and
15 representatives met with SBNF officials and staff. While collegial, the meeting
16 ended with no identified solution. SBNF officials spent much of the meeting
17 explaining their inability to fully communicate with the Nation due to the ongoing
18 litigation with BlueTriton and a local environmental group. SBNF Supervisor
19 Harrison said the litigation dictated how she could engage with the Nation. The
20 Nation's representatives again explored the ability to secure a special use permit to
21 continue accessing water. SBNF Supervisor Harrison reiterated that the process
22 could take two to three years. Asked whether the application would be subject to a
23 categorical exclusion for environmental review purposes, Supervisor Harrison said
24 it would reduce the time but the overall process would still be long and the public
25 comment period itself would take six to seven months. SBNF officials then asked
26 what water delivery system the Nation would use when BlueTriton's system is
27 decommissioned beginning on January 16, 2025. Additionally, SBNF officials said
28

1 they still lacked enough information about the Nation's water needs and usage for
2 Arrowhead Springs.

3 25. After the November 6, 2024 meeting with SBNF officials, I
4 recommended the Nation's leadership traveled to Washington, D.C., and meet with
5 senior officials at the USFS and USDA. It was my belief that little progress would
6 be made with SBNF officials and staff, particularly since they had indicated they
7 could not fully engage with the Nation due to the ongoing litigation.

8 26. On November 14, 2024, I contacted USDA's External and
9 Intergovernmental Affairs Office requesting a meeting with senior USDA officials
10 on November 19, 2024, in Washington, D.C. I explained the meeting would
11 involve the Nation's leaders and staff to discuss the Nation's need to ensure the
12 continued delivery of water until the Nation could connect Arrowhead Springs to
13 the local municipal water system.

14 27. With the request, I provided a background document so the USDA
15 could determine which officials should attend. The document provided, in part:

16 The [Nation] has been meeting with the Forest officials since mid-
17 August to try and find a mechanism to allow the Nation to continue to
18 have access to water until the Nation can connect to municipal water,
19 but no solution has been found yet. The Forest is planning to cut off
20 the Nation's access to water on January 15, 2025, and the Nation is
21 wanting to find a mutually agreeable mechanism that will allow it to
22 continue access to water until it can connect to municipal water.

23 28. On November 17, 2024, I forwarded to the USDA External and
24 Intergovernmental Affairs Office a copy of correspondence Chairwoman Lynn
25 Valbuena sent to SBNF Supervisor Harrison on November 15, 2024. The letter
26 detailed the history of the Nation's engagement with SBNF officials to date,
27 explaining the nature of the problem, the issue that required resolution, and the
28 Nation's expectations for meaningful government-to-government consultation to
protect its access to water.

29 The next day, on November 18, the USDA granted my meeting
request, and I was informed the lead USDA official in attendance would be

1 Dr. Homer Wilkes, who serves as the Under Secretary for Natural Resources and
2 Environment and oversees the USFS. I forwarded to the Under Secretary's office a
3 copy of the letter the Nation sent to SBNF Supervisor Harrison on November 15,
4 2024, requesting that it be shared with all USDA attendees in advance of the
5 pending meeting.

6 30. The meeting proceeded the next day, on November 19, and was
7 attended by Yuhaaviatam Tribal Council Member Joseph Maarango, Mr. Little, and
8 myself, on behalf of the Nation, and Under Secretary Wilkes and approximately
9 seven USDA staff on behalf of the federal government.

10 31. At the meeting, Councilman Maarango briefly summarized the issue
11 from the Nation's perspective. Under Secretary Wilkes indicated he had been
12 briefed before the meeting and assured Councilman Maarango the USDA did not
13 want to see the Nation's water shut off. Under Secretary Wilkes said he believed
14 the quickest way to assure the Nation's continued access to water is for the Nation
15 to apply for a special use permit. I informed Under Secretary Wilkes that the
16 option had been discussed with SBNF Supervisor Harrison and her staff, but they
17 consistently told the Nation it would take two to three years to process an
18 application given the regulatory requirements of the National Environmental
19 Policy Act (NEPA). As a consequence, we were told the Nation could not secure a
20 special use permit before January 15, 2025, and Supervisor Harrison said she could
21 not extend access to water for the Nation beyond January 15 without some
22 document in place providing her authority to do so.

23 32. Under Secretary Wilkes balked at the two to three year timeframe and
24 indicated that he has worked at the USDA and USFS for decades and was
25 confident a special use permit could be expedited for the Nation and put in place
26 by January 15, 2025. I then asked the Under Secretary what would happen if the
27 Nation's application for a special use permit was still being processed on
28 January 15, 2025, but not yet approved. I expressed concern about the time it

1 would take to complete the NEPA portion of the application and said this was the
2 portion that the Forest Supervisor had indicated would take the longest. Under
3 Secretary Wilkes said he did not believe NEPA compliance would take that long as
4 the Nation is already using the water and would not be changing its use. We
5 briefly discussed the Nation's application falling within the categorical exclusion
6 provision of the NEPA process.

7 33. Importantly, Under Secretary Wilkes told us that the USFS could
8 extend the Nation's access to water while the special use permit application was
9 being processed, assuming it could not be approved by January 15, 2025. I
10 reminded the Under Secretary that there was a lawsuit pending by Save Our Forest
11 Association challenging the USFS's authority to grant a special use permit
12 allowing water to be drawn from the Forest. Under Secretary Wilkes asked his
13 staff if a decision had been issued in that case, and his staff responded that no
14 decision had been made and likely would not be made by January 15, 2025. Under
15 Secretary Wilkes reiterated that SBNF Supervisor Harrison could extend the
16 Nation's access to water beyond January 15, 2025, while the application for a
17 special use permit was being processed. Under Secretary Wilkes asked his staff to
18 confirm his views and get back to him.

19 34. The Nation's Chief Intergovernmental Affairs Officer Daniel Little
20 asked Under Secretary Wilkes whether the Nation and USFS could enter a
21 co-stewardship (or co-management) agreement, which might be faster than the
22 special use permit process. Mr. Little mentioned how the Biden Administration
23 was prioritizing co-stewardship agreements and that more than 200 such
24 agreements are already in place. Under Secretary Wilkes indicated that while there
25 are many co-management agreements, they are a relatively new vehicle; by
26 contrast, he said, the special use permit process is a well-known process within the
27 USDA and would be much quicker. Under Secretary Wilkes restated his belief that
28

1 a special use permit would be the best path for the Nation and encouraged the
2 Nation to apply.

3 35. At this point, Councilman Maarango thanked the Under Secretary for
4 his time and said the Nation would follow the Under Secretary's recommendation
5 and apply for a special use permit. I informed Under Secretary Wilkes that the
6 Nation was not familiar with the application process for special use permits and
7 asked if the USDA or USFS would be able to provide the Nation with technical
8 assistance with the application. Under Secretary Wilkes approved the request for
9 the USDA to provide the requested technical assistance, and he designated two
10 members of his staff – Anthony Scardina, the Senior Advisor for Programs within
11 the Office of the Under Secretary, and Christine Dawe, who I understand to be
12 Senior Advisor, Natural Resources and Environment, USDA – to serve as the
13 Nation's points of contact. Mr. Scardina and Ms. Dawe indicated they would reach
14 out to the USFS after the meeting to start the process.

15 36. My next outreach to USDA was on December 3, 2024, when I spoke
16 with Mr. Scardina. Mr. Scardina confirmed the USDA was committed to helping
17 the Nation develop the application for the special use permit and said he had
18 reached out to the Regional Forester (who I understood to be Pacific Southwest
19 Regional Forester Jennifer Eberlin) to identify which USFS staff would help the
20 Nation with the application.

21 37. On or about December 10, 2024, Mr. Scardina and I spoke again. He
22 informed me the USFS needed more information regarding how much water the
23 Nation needed. He also said there had been internal meetings between USDA and
24 USFS staff and there was a concern raised about whether a special use permit
25 could be issued to the Nation for accessing water from SBNF when the water
26 delivery system currently in place is owned by BlueTriton and not the Nation.
27 Mr. Scardina said this issue needed to be resolved as the application needed to
28 describe how the Nation would have the water delivered to Arrowhead Springs. I

1 asked Mr. Scardina whether a lease or temporary use agreement between the
2 Nation and BlueTriton would resolve any concerns of the agencies. Mr. Scardina
3 said he would check internally and get back to me.

4 38. That same day, Mr. Scardina followed up to inform me that a lease or
5 temporary use agreement between the Nation and BlueTriton would be sufficient
6 for the Nation to obtain a special use permit so long as such agreement gave the
7 Nation “control” over the delivery system. I indicated that I would inform the
8 Nation and keep Mr. Scardina abreast of the development of such an agreement
9 between the Nation and BlueTriton. I also informed Mr. Scardina that the Nation
10 had staff ready to start working with the appropriate agency staff on the
11 application. He said he would follow up with me.

12 39. On December 11, 2024, I sent Mr. Scardina the Nation’s
13 November 15, 2024 letter to SBNF Supervisor Harrison, explaining that the letter
14 provides background on the Nation’s Arrowhead Springs property, includes a map,
15 and describes the Nation’s water rights, the water needs for Arrowhead Springs,
16 and Arrowhead Springs’ water-related uses.

17 40. On that same day, I responded to inquiries from specific
18 Congressional offices who indicated that certain Congressional Members wanted
19 to send a letter to the USDA Secretary and Under Secretary requesting that they
20 ensure the Nation has continued access to water from the SBNF until the Nation
21 can connect its Arrowhead Springs property to a local municipal water system. I
22 informed these Congressional offices of the progress made with the support of the
23 Under Secretary, and that the Under Secretary committed to providing technical
24 assistance and having the Nation’s application expedited so that water access can
25 continue. Attached hereto as **Exhibit 24** is a true and correct copy of the
26 December 18, 2024 correspondence to the USDA Secretary and Under Secretary
27 from certain Congressional Members urging the agency officials to take the action
28 needed to keep the Nation’s water in place. This letter specifically acknowledged

1 the pending work on a special use permit and states, “[w]e understand as of the
2 date of this letter, the Department is working with the Tribe to obtain a Special Use
3 Permit. We urge you to expedite that process to ensure no disruption in the Tribe’s
4 access to water.”

5 41. On December 30, 2024, I communicated to Mr. Scardina that the
6 Nation was in the process of negotiating an agreement with BlueTriton to use the
7 company’s water delivery system and that I was confident such an agreement could
8 be included with the Nation’s timely-submitted special use permit application. I
9 asked Mr. Scardina if we could coordinate a meeting between the Nation’s staff
10 and the USDA and USFS that week to begin compiling the application materials.
11 Mr. Scardina informed me of an internal agency meeting that was occurring that
12 day to discuss the Nation’s application and that he would get back to me.

13 42. On January 3, 2025, Mr. Scardina informed me the USFS was now
14 questioning whether the Nation had any legal rights to access water from the SBNF
15 and asked me if I could provide some analysis of the issue to him to share with the
16 USFS. I indicated to him that the November 15, 2024 letter from the Nation to
17 SBNF Supervisor Harrison described the Nation’s legal rights to water from the
18 SBNF and that the USFS attorneys and staff should read that letter and its
19 attachments and let me know if there are any remaining questions.

20 43. I have not had further communication with the USDA as of the date of
21 execution of this declaration.

22 I declare under penalty of perjury under the laws of the United States that the
23 foregoing is true and correct. Executed this 11th day of January 2025 at North
24 Andover, Massachusetts.

25 
26 ALLISON C. BINNEY
27
28